Court No.3

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 147 (S/S)/ 2003

Mukhta Sharma wife of Sanjay Kumar Sharma
R/o 39 Brahm Vihar Kankhal Haridwar
District Haridwar … Petitioner.

Vs.

1. Joint Director of Education Garhwal Division
   Pauri District Pauri Garhwal.
2. District Inspector of Schools Haridwar.
3. Manager Panna Lal Bhalla, Municipal
   Inter College Haridwar.
4. State of Uttaranchal through Secretary Education
   Dehradun.
5. Smt. Vinita Karl,
   Assistant Teacher, Panna Lal Bhalla,
   Municipal Inter College Haridwar …..Respondents.

Sri Alok Singh learned counsel for the petitioner.
Sri K.P. Upadhyaya learned Standing Counsel and
Sri Pankaj Miglani lealrned Advocate, counsel for the respondents

Date of Judgment: 7-11-2003.

ORAL JUDGMENT: (**Per Hon'ble Irshad Hussain, J.)**

This is a writ petition under Article 226 of the Constitution of India wherein following two main prayers have been made:-

A. Issue a writ, order or direction in the nature of certiorari quashing the orders dated 2-4-2003 and 12-4-2003 (filed as annexures 4 and 5) above.

B. Issue a writ, order or direction in the nature of mandamus commanding the respondent Nos. 1,2,3 and 4 to fill up the post of Lecturer (Sanskrit) by direct recruitment through commission/ selection board in the light of letter dated 27-9-2000.

2- Panna Lal Bhalla Municipal Inter College, Haridwar is a non-government recognized grant-in-aid institution under the U.P. Intermediate Education Act, 1991. From the record it is evident that the petitioner and respondent No.5 were both appointed Assistant Teachers in this institution on

adhoc basis on 2.7.1990 and they both were regularized with effect from 26.3.1996 under section 33-C of the U.P. Secondary Education Services Selection Board Act, 1982 (Annexure C.A.1 to the counter affidavit of respondent No.3).

3- On 30-6-1994 post of lecturer(Sanskrit) fell vacant on account of superannuation of Sri Raja Ram Sharma. There were few other vacant posts of lecturers against the promotion quota. By order dated 2.4.2003 (Annexure-4 to the petition) the selection committee had found the Assistant Teachers of the institution for promotion as per rule 14 (1 and 2) of the U.P. Secondary Education Services Selection Board, Rules 1998 and the names of the teachers promoted were mentioned in the annexed list. These promotions were against 50% promotion quota meant for Assistant Teachers. By this order the respondent No.5 was promoted as Lecturer (Sanskrit) on the said vacant post. The order dated 12.4.2003 also impugned in the petition (Annexure-5) was issued for follow-up action to the order of the promotion dated 2-4-2003.

4- The petitioner alleged that the name of respondent No.5 had earlier been rejected and despite this fact he had been promoted by the impugned orders ignoring her claim and entitlement for the said promotion post of Lecturer (Sanskrit). The petitioner also averred that the candidature of respondent No.5 having been rejected twice and it had been decided that the post of Lecturer (Sanskrit) would be filled up by direct recruitment through the commission/selection board, the respondent No.5 had been promoted without considering the petitioner for promotion. Therefore, the promotion granted is illegal and in gross violation of Rule 14 of the U.P. Secondary Education Services Selection Board Rules, 1998.

5- The learned counsel for the petitioner argued that petitioner was the only qualifying candidate as per Rule 14 to be considered for promotion against the vacancy of Lecturer (Sanskrit) as respondent No.5 had not completed five years continuous regular service on the first day of the year of recruitment. Rule-14 of the said 1998 Rules is as under:-

> "14-Procedure in recruitment by promotion- (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who posses the qualifications prescribed for the post and have completed five years continuous' regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturer grade or

the trained graduates grade, as the case may by, without their having applied for the same.

Note- For the purposes of this sub-rule, regular service rendered in any other recognized institution shall be counted for eligibility, unless interrupted by removal, dismissals or reduction to a lower post.

(2) The criteria for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the proforma given in Appendix 'A'.

(4) Within three weeks of the receipt of the list from the Management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list of the Joint Director.

(5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call for such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in sub-section (1) of Section 12 and after the Committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management.

(6) Within ten days of the receipt of the panel from the Joint Director under sub-rule (5), the Inspector shall send the name of the selected candidates to the Management of the institution which has notified the vacancy and the Management shall accordingly on authorization under its resolution issued the appointment order in the pro forma given in Appendix 'F' to such candidates."

6- A bare reading of the Rules-14 make it clear that it is the year of recruitment and not the date of vacancy which is relevant for the purpose of qualifying five years continuous regular service as a teacher of the institution. The respondent No.5 like the petitioner was appointed on 2.7.1990 on adhoc basis and they were regularized with effect from 26.3.1996. The respondent No.5 has therefore completed the five years continuous regular service on the first day of the year of the recruitment, which is 2003 in this case. As stated above the respondent No.5 had been selected for promotion by order dated 2.4.2003.

7- The learned counsel for the petitioner pressed into service the decision of Allahabad High Court in the matter of **Swadesh Mishra Vs. District Inspector of Schools, Faizabad; 1996 A.W.C. page 631** to buttress his above argument. In the reported case the rule relevant for the

purpose of recruitment was Rule-9 of U.P. Secondary Education Service Commission Rules, 1983 which was occupying the field at that time. In the said rule for promotion of Assistant Teacher to the Lecturer grade the qualifying five years continuous service as teacher to be computed on the date of the occurrence of vacancy. As stated above in the existing Rule-14 of the 1998 Rules, the requirement stand changed to the computation of five years continuous regular service on the first day of the year of recruitment. Therefore the reported decision can not be of any help to the cause of the petitioner and it has no application whatsoever to the facts of the case.

8- This aspect of the matter also give an answer to the contention of the petitioner that respondent No.5 was not earlier found eligible for promotion by the concerned authorities. Annexures 1, 2 and 3 are the communications dated 22.11.99, 27.9.2000 and 21.5.2001 from District Inspector of Schools, Haridwar, respondent No.2 to the Manager of the said institution, respondent No.3 regarding the intimation that since the respondent No.5 has not completed the five years continuous regular service on the date of the superannuation of Lecturer (Sanskrit) on 30-6-1994, she is not being considered for promotion against 50% quota under Rule 14 of the said 1998 Rules. It clearly appear that the respondent authorities failed to correctly interpret the provision of the Rule 14 so far as it contain the qualifying requirement of five years continuous regular service on the first day of the year of recruitment. Since the said period of five years was not to be computed on the date of the occurrence of vacancy i.e. 30-6-1994 the above communications showing ineligibility of the respondent No.5 for the promotion are of no legal consequence and therefore there is no substance in the argument of the learned counsel for the petitioner that lateron the candidature of respondent No.5 could not have been considered for promotion by the respondent authorities under the said rules.

9- It was next argued that the petitioner also having the eligibility for promotion to the said post of the lecturer was not considered by the respondent authorities. The impugned order dated 2.4.2003 (Annexure-4 to the petition) do not indicate that all eligible Assistant Teachers of the institution were not considered by the Selection Board for promotion. Supplementary counter affidavit of respondent No.3 and Annexure S.A., which is the letter dated 28-6-2003 of the respondent No.3 relating to return

of the record of the eligible teachers received for consideration by the Selection Board and which were being returned to the institution prove that the records of both candidates, the petitioner as well as respondent No.5 were sent for consideration of the selection Board which were to take decision to promote the candidate to the post of Lecturer (Sanskrit). Therefore the stand taken by the petitioner is baseless.

10- In any case the petitioner was not senior to the respondent No.5 and therefore this could not have been a case of not considering the case of a senior when his junior was considered for promotion against the promotion quota under the relevant rules. As is evident from order dated 26-3-1996 (Annexure C-A-1) the petitioner and respondent No.5 were appointed and regularised on the same date and respondent No.5 being older in age was rightly treated as senior to the petitioner. The date of birth of respondent No.5 is 15-7-1963 and whereas the date of birth of the petitioner is 7.3.1964. The criteria for determination of the seniority has been given in Regulation-3 of Chapter-II of the regulations framed under the U.P. Intermediate Education Act, 1921. It reads as under:-

> "3(1) (bb), which reads as under "3.(1) The Committee of Management of every Institution shall cause a seniority list of Teachers to be prepared in accordance with a the following provision:-
>
> (a)……..
> (b)……..
>
> (bb) Where two or more teacher working in a grade are promoted toa the next higher grade on the same date, their seniority inter-se shall be determined on the basis of the length of their service to be reckoned the date of their substantive appointment in the grade from which they are promoted:
>
> Provided that if such length of service is equal, seniority shall be determined on the basis of age."

11- From the above it is evident that if length of service is equal, seniority shall be determined on the basis of age and there can be no gain saying that respondent no.5 was senior to the petitioner. In the instant case a senior, respondent No.5 has been selected and promoted under the relevant rules and therefore there is absolutely no illegality whatsoever in the order passed thereon by the respondent authorities.

12- For the foregoing reasons the petitioner has failed to assail the promotion order dated 2.4.2003 as well as the follow up order dated 12.4.2003, therefore, she is not entitled to be granted the prayers made in the petition. In other words the petition is mis-conceived and is liable to be dismissed.

13- The petition is dismissed. No order as to costs. The stay order dated 19-5-2003 stand vacated.

(Irshad Hussain, J.)

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